IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No.259 of 2003 with
FAO(MVA) No.325 of 2004.

Judgement reserved on: 25.9.2007

Date of decision: 4.10.2007.

1.FAO(MVA) No.259 of 2003

Smt. Sita Devi Sood ……..Appellant

Vs.

Partap Singh and others …. Respondents.

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2. FAO No.325 of 2004

Partap Singh ……..Appellant

Vs.

Smt. Sita Devi and others ……Respondents

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?, No

For the Appellant : **Mr. Rakesh Jaswal , Advocate. In FAO(MVA) No.259 of 2003 and for respondents No.1 and 2 in FAO (MVA) No.325 of 2004.**

For the Respondents : **Mr. Ramakant Sharma, Advocate, for respondent No.1. in FAO(MVA) No.259 of 2003 and appellant in FAO(MVA) 325 of 2004.**

Mr. Deepak Bhasin, Advocate, for respondent No.3 in both the appeals

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Kuldip Singh, Judge.

This judgment shall dispose of FAO(MVA) No.259 of 2003 and FAO(MVA) No.325 of 2004, as both of them have arisen out of the common award dated 21.2.2003 passed by learned Motor Accident Claims Tribunal, Solan in M.A.C.Petition No.7-S/2 of 2001. FAO

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

No.259/2003 has been filed by owner of bus and FAO No.325 of 2004 has been filed by the injured-claimant for enhancement of the compensation.

2. The facts in both the appeals are common, however, for convenience facts are being given from FAO No.259 of 2003. The respondent No.1-claimant boarded bus bearing registration No.HP-14-3995 owned by appellant on 21.11.2000. The bus went out of the road due to rash and negligent driving of respondent No.2 at place Mahesh Auto, Deonghat and respondent No.1 sustained multiple injuries, an FIR No.227/2000 was registered at Police Station, Solan. The bus was insured with respondent No.3. The respondent No.1 was 43 years of age at the time of accident and was earning Rs.5000/- per month. He remained admitted in District Hospital, Solan for 11 days and had spent about Rs.15,000/- on his treatment . He filed claim petition and claimed Rs.3,00,000/- compensation. The respondent No.2-driver filed reply and denied the case set up by the respondent No.1. According to him the accident took place due to mechanical defect and not by his rash and negligent driving. He has pleaded that he was driving the bus safely, carefully and in normal speed. The appellant-owner of the bus adopted the reply filed by respondent No.2 .

3. The respondent No.3-Insurer took several preliminary objections such as bus was not insured, in any case if it is found that the bus was insured in that case also the liability of the insurer is as per terms and conditions of the policy, respondent No.2 was not holding any valid and effective driving licence at the time of accident, the bus was being plied in contravention of the conditions of the permit.

On merits respondent No.3-insurer denied the claim of the respondent No.1.

4. The learned Tribunal awarded Rs.34,000/- to respondent No.1 along with 9% interest per annum from the date of petition with a direction that appellant-owner and respondent No.2 driver of the bus shall pay the compensation. Respondent No.3-Insurer was exonerated. The appellant-owner filed the appeal against the impugned award whereby respondent No.3-Insurer has been exonerated, the respondent No.1-claimant has filed the appeal for enhancement of compensation.

5. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant-owner of the bus has submitted that learned Tribunal has wrongly dismissed the claim petition against respondent No.3-Insurer. He has submitted that several claim petitions were filed regarding the same accident and in those petitions the Tribunal has made liable insurer to pay the compensation and therefore, in the case in hand the liability, if any, is of the Insurer as the bus was insured with respondent No.3-Insurer at the time of the accident. The FAO No.325 of 2004 has been filed by the claimant for enhancement of compensation. The learned counsel for Insurer opposed both the appeals whereas learned counsel for owner of the bus has also opposed FAO No.325 of 2004.

6. In FAO No.259 of 2003 vide order dated 30.10.2006 passed in CMP No.805 of 2005, certified copy of award dated 17.1.2003 passed by learned Motor Accident Claims Tribunal in MAC Petition No.12-S/2 of 2001 was ordered to be taken on record. During

hearing, in view of order dated 30.10.2006 in CMP No.805 of 2005 the learned counsel for appellant in FAO No.259 of 2003 has not pressed CMP No.475 of 2003 in FAO No.259 of 2003 for additional evidence. The perusal of award dated 17.1.2003 would show that one Narender Kumar had filed claim petition against Smt. Sita Devi owner, John Messy driver and Manager Oriental Insurance Company-Insurer of bus No.HP-14-3995. The learned counsel representing the parties do not deny the fact that award dated 17.1.2003 is with respect to the same accident for which the claim petition was filed by respondent No.1-claimant in the present case. The learned Tribunal in MAC Petition No.12-S/2 of 2001 vide award dated 17.1.2003 has awarded Rs.35,000/- along with interest at the rate of 9% per annum from the date of petition in favour of the claimant of that case and against all the respondents including the insurer. The Insurance Certificate of bus No.HP-14-3995 was proved on record in that case. In view of this it has been established on record that bus bearing registration No.HP-14-3995 was insured at the time of accident and therefore, the respondent No.3-insurer in the present case also is liable to pay the compensation and impugned award is accordingly modified and it is held that respondent No.3- insurer shall pay the compensation amount to respondent No.1- claimant along with interest.

7. The FAO No.325 of 2004 has been filed for enhancement of compensation by claimant. PW-1 Partap Singh claimant has stated that he remained admitted in hospital for 11-12 days and thereafter he remained idle for about 6 months. Due to accident he could not perform any work. He can not lift weight and walk properly. He has

spent about Rs. 15000/- to Rs.18000/- on his treatment. He placed on record his medical bills as mark Y-1 to mark Y-7.

8. PW-3 Dr. Anil Bansal has stated that he examined Partap Singh who had sustained injuries in left leg. He has proved disability certificate Ex.PW-3/Aof the claimant showing disability at 8%. In cross-examination he has stated that the appellant has suffered sensory loss and weakness of concerned part. He has denied that by the passage of time there would be no loss to the concerned part. In absence of proof of income of respondent No.1-claimant his income can be taken Rs.15,000/- per annum under Second Schedule of the Motor Vehicles Act, 1988. The Tribunal has awarded Rs.5000/- towards pain and suffering, Rs.10,000/- for loss of amenities, Rs.14,000/- for loss of earnings etc. and Rs.5,000/- towards medical treatment. In all the Tribunal has awarded Rs.34,000/- to the claimant.

9. The learned counsel for the claimant has relied ***North-West KSRTC vs. Mallikarjun Sanganabasappa Shettar and another [(2002) 9 Supreme Court Cases 412*** **]** in support of his contention that claimant is entitled to enhancement of compensation towards loss of income. In ***North-West KSRTC*** case, the disability on account of fracture on right wrist was assessed at 25%. The Apex Court has assessed the loss of income Rs.60,000/-. In the present case the disability is 8% which is approximately 1/3rd of the disability of the claimant in ***North-West KSRTC*** case. Therefore, claimant in the present case is entitled to Rs.20,000/- on account of loss of future earning as against Rs.14,000/- awarded by the Tribunal. In my view, the other amounts awarded by the Tribunal under different heads to

the claimant are just and reasonable keeping in view the injuries sustained by him in the accident. Therefore, in all the respondent No.1-claimant is entitled to Rs.40,000/- compensation which is to be paid by owner, driver as well as insurer of the bus. The bus was insured at the time of accident, therefore, the entire liability to pay the compensation is of the insurer of bus No.HP-14-3995 i.e. Oriental Insurance Company. The impugned award to this extent is modified.

10. The result of the above discussion, both the appeals are allowed. The impugned award is modified. An award of Rs.40,000/- is passed in favour of Partap Singh (respondent No.1-claimant in FAO No.259 of 2003) and against Smt.Sita Devi Sood owner, John Messy driver, Oriental Insurance Company-insurer through Branch Manager, the Mall Solan along with 9% interest per annum from the date of filing of the petition i.e. 9.1.2001 till the date of payment. The bus No.HP-14-3995 was insured with Oriental Insurance Company, the Mall Solan, therefore, whole of the compensation amount along with interest shall be paid by Oriental Insurance Company through its Branch Manager, the Mall Solan, HP to Partap Singh (respondent No.1-claimant in FAO No.259 of 2003). No costs.

In view of disposal of FAO No.259 of 2003, CMP No.475 of 2003 has become infructous.

(Kuldip Singh)
Judge.

October 4,2007
(sks)